IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 21ST AUGUST 2007 / 30TH SRAVANA 1929

WP(C).No. 3331 of 2005(V)

PETITIONER:

K.K.BHAIRAVAN,
ANJILIPARAMBIL, THUMPOLY P.O., ALAPPUZHA-8.

BY ADV. SRI.K.K.SATHEESH.

RESPONDENTS:
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1. **UNION OF INDIA,**
   REPRESENTED BY THE SECRETARY, MINISTRY OF
   HOME AFFAIRS, FREEDOM FIGHTERS' DIVISION,
   LOK NAYAK BHAWAN, KHAN MARKET, NEW DELHI-110 003.

2. **STATE OF KERALA,**
   REPRESENTED BY THE SECRETARY,
   GENERAL ADMINISTRATION (FFP.A) DEPARTMENT,
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

3. **THE DISTRICT COLLECTOR, ALAPPUZHA.**

BY ADV. SRI.S.R.AJITH, ADDL.CGSC,
GOVERNMENT PLEADER SRI. V.T.K. MOHANAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.3331/2005:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE PROCEEDINGS OF THE R.3. VIDE ORDER NO. H4-43252/98 DTD. 03/11/1999 GRANTING STATE PENSION TO THE PETITIONER.

EXT.P.2: COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER FOR THE GRANT OF SSS PENSION DTD. 30/04/1998.

EXT.P.3: COPY OF THE PKC ISSUED BY SRI. KUNJAN SUKUMARAN DTD. 26/04/1998.

EXT.P.4: COPY OF THE PKC ISSUED BY SRI. P.K. CHANDRANANDAN EX-MLA DTD. 20/09/1991.

EXT.P.5: COPY OF THE NARC ISSUED BY THE CJM COURT, ALAPPUZHA.

EXT.P.6: COPY OF THE REPRESENTATION DTD. 09/12/2004 SUBMITTED BY THE PETITIONER TO THE R.3.

EXT.P.7: COPY OF THE PKC ISSUED BY THE EMINENT FREEDOM FIGHTER SRI. H.K. CHAKRAPANI DTD. 16/11/2004.

EXT.P.8: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE R.3. DTD. 27/12/2004.

EXT.P.9: COPY OF THE AFFIDAVIT DULY ATTESTED BY THE JUDICIAL IST CLASS MAGISTRATE, ALAPPUZHA DTD. 13/12/2004.

RESPONDENT'S EXHIBIT:

EXT.R2.A: COPY OF THE LETTER NO. 8/12/98-FF-(P) DTD. 02/11/1998.

//TRUE COPY//

prv.

T.R. Ramachandran Nair, J.

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W.P.(C).NO.3331 of 2005-V

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Dated this the 21st day of August, 2007

JUDGMENT

The petitioner herein is aggrieved by the inaction of the respondents to grant SSS Pension to the petitioner for his participation and sufferings in the Punnapra – Vayalar struggle which is recognised for the grant of SSS Pension. It is not being granted by the first respondent, Union of India for want of due recommendation by the State Government. The case of the petitioner in the writ petition is that a warrant of arrest was issued against him by the Special Magistrate Court, Alappuzha in case No.P.E.7/1122 ME and he had gone underground for a period of more than six months from October 1946 to July 1947. He is getting State pension as per order dated 3.11.1999, produced as Ext.P1. Ext.P2 is the application for Central pension dated 30.4.1998. Exts.P3 and P4 are the Personal Knowledge Certificates issued by Shri Kunjan Sukumaran and Shri P.K. Chandranandan Ex.MLA. Ext.P5 is the NARC obtained from the Chief Judicial Magistrate, Alappuzha. He has also produced the Personal Knowledge Certificate from a prominent freedom fighter, Shri H.K. Chakrapani along with a representation which have been produced as Exts.P6 and P7. Ext.P9 is the

affidavit duly attested by the Judicial First Class Magistrate, Alappuzha which was sent along with Ext.P8 representation.

2. In the counter affidavit filed by the first respondent, it is stated that they are awaiting the mandatory verification report from the State Government. In the counter affidavit filed by the State, the averments made are to the effect that the certificate of Shri Kunjan Sukumaran is not acceptable, that the certificate issued by Shri P.K. Chandranandan Ex.MLA is not in the prescribed form and that the NARC is not in the proper form. Therefore, the Personal Knowledge Certificates have no relevance. It is also stated that his claim before the District Advisory Committee in the hearing held on 28.4.1993 was different and therefore the claim is wrongful.

3. Learned counsel for the petitioner submits that the claim of the petitioner is that of a genuine freedom fighter and recognising his participation in the freedom struggle, by Ext.P1 pension under the Kerala Freed Fighters Pension Rules was granted to him. It was ordered on 3.11.1999. Ext.P1 shows that the Government had directed the District Collector to sanction Kerala Freedom Fighters' Pension. Therefore, as the Government itself had taken a decision at that point of time, it is beyond comprehension as to how they can refuse to recommend the same for grant of Central pension. Reliance placed on the alleged discrepancy in the

meeting of the District Advisory Committee dated 28.4.1993 is immaterial in view of the grant of State pension in the year 1999.

4. The next aspect is the certificates from Shri Kunjan Sukumaran and Shri P.K. Chandranandan Ex.MLA. Now that the petitioner has produced the certificate from Shri H.K. Chakrapani who is an eligible certifier and is a recipient of SSS Pension, those have no relevance at all. As far as the NARC is concerned, in the decision of this court reported in **Sadananda Swamy v. Union of India** (2004 (2) KLT SN page 76, case No.92) it was held that when there is production of abscondence certificate from freedom fighters along with NARC issued from concerned authorities, it cannot be rejected on the reason that minute details are not furnished or in the absence of records. The same position arises here also. Apart from that, when the Government itself had granted State pension to the petitioner, now at a later point of time want of a proper NARC is not a reason not to recommend the application for Central pension. In this case the petitioner's claim is based on the warrant of arrest issued against him in case No.P.E.7/1122 M.E. The NARC can be issued only by the Criminal Court, which has been produced also. The same has to be tested along with the Personal Knowledge Certificates. It is not disputed that the petitioner is receiving State pension and Government has no case that he was not a

genuine freedom fighter.

5. Therefore, there will be a direction to the second respondent to forward the verification-cum-entitlement report duly recommending the petitioner's case for grant of SSS Pension to the first respondent, within a period of six weeks from the date of receipt of a copy of this judgment. On receipt of the same, the first respondent shall consider the application along with all documents and records and communicate the decision within a further period of two months to the petitioner. The entitlement of the petitioner for arrears with effect from the date of Ext.P2 application dated 30.4.1998 shall also be considered by the first respondent.

The writ petition is disposed of in the above terms. No costs.

(T.R. Ramachandran Nair, Judge.)

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